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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,266	12/15/2003	Christopher W. Carter	93111pus	1482
6431	7590	07/27/2005	EXAMINER	
HOFBAUER ASSOCIATES SUITE 205 NORTH 1455 LAKESHORE ROAD BURLINGTON, ON L7S 2J1 CANADA			CINTINS, IVARS C	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 07/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,266

Applicant(s)

CARTER, CHRISTOPHER W.

Examiner

Ivars C. Cintins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's election without traverse of Group I, claims 1 and 3-11, in the reply filed on April 5, 2005 is acknowledged. Accordingly, claims 12-18 are withdrawn from further consideration, as being directed to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3-10 are again rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (U.S. Patent No. 4,787,949). The reference discloses an absorbent body member having an active surface portion, a central aperture formed completely through the absorbent body member, and a furrowed surface (see Fig. 3); and this is all that is required by claims 1 and 3-10.

Claims 1 and 3-11 are again rejected under 35 U.S.C. 102(b) as being anticipated by Gsell et al. (U.S. Patent No. 5,258,127) or Mitamura et al. (U.S. Patent No. 5,618,425). Each of the references discloses a body member comprising a central aperture and a surface including a plurality of radially extending "furrow" segments (see Fig. 1 of Gsell et al.; and Fig. 2 of Mitamura et al.), which body member is made from the recited materials (see col. 5, lines 40-43 of Gsell et al.; and col. 5, line 16 of Mitamura et al.); and therefore, this body member will inherently be capable of functioning as an absorbent.

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Claims 1 and 3 are again rejected under 35 U.S.C. 102(e) as being anticipated by Clukies (U.S. Pub. No. 2004/0134858). The reference discloses a porous absorbent body member comprising a central aperture (see Fig. 2); and this is all that is required by claims 1 and 3.

Applicant's arguments filed December 16, 2004 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that amended claim 1 is not anticipated by Cole, Gsell or Mitamura because these references disclose a member that is adapted to be rigidly supported in restrained, non-floating and non-buoyant, relation. It is pointed out, however, that the intended use of a device (i.e. with a floating member) is not a structural limitation, and hence cannot be relied upon to patentably distinguish apparatus claims. It is well settled that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The absorbent member in each of these reference systems is inherently capable of being employed in combination with a floating member, and this capability is all that is required by claims 1 and 3-11.

Applicant also argues that the absorbent member of Clukies is not fixed to anything, but is designed to float up and down on the fluid surface level of the system in moving relation to its secondary member. Again, this argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. As explained above, the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. This reference device comprises a porous

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absorbent body member having a central aperture, which body member is capable of being secured to a floating member, and this is all that is required by apparatus claims 1 and 3.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is 571-272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at 571-272-1166.

The centralized facsimile number for the USPTO is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
July 25, 2005